

SOUTHERN ENVIRONMENTAL LAW CENTER

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March 1, 2019

VIA FOIAonline (foiaonline.regulations.gov)

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Re: Freedom of Information Act Request: Communications between the Tennessee Valley Authority and the Environmental Protection Agency regarding the federal Coal Combustion Residuals Rule's location restriction provisions

To the FOIA Officer:

Under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, as amended, the Southern Environmental Law Center ("SELC") requests the following documents relating to the federal Coal Combustion Residuals Rule, 40 C.F.R. §§ 257.50-107 ("CCR Rule"):

1. From October 19, 2015, to the date upon which this request is processed, all documents and data, including email correspondence, exchanged between the Environmental Protection Agency ("EPA") and the Tennessee Valley Authority ("TVA") regarding the location restriction demonstrations sections of the CCR Rule, 40 C.F.R. §§ 257.60-64; and
2. From October 19, 2015, to the date upon which this request is processed, all documents and data, including email correspondence, exchanged between EPA and TVA regarding the recordkeeping, notification, and internet posting sections of the CCR Rule, 40 C.F.R. §§ 257.105-107.

For the purposes of this request, the term "documents" includes all written, printed, recorded or electronic: materials, communications, correspondence, emails, memoranda, notations, copies, diagrams, charts, maps, photographs, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages and mail in the possession or control of the Environmental Protection Agency or its agents.

These records could be found in the custody of the Office of Enforcement and Compliance Assurance or the Office of Land and Emergency Management. To further facilitate finding these records, a list of TVA's facilities has been compiled. Links in the footnotes lead to the facility page on EPA's Facility Registry Service. This list is not meant to be exclusive, or to limit the above request in any way.

US TVA Allen Fossil Plant (EPA Registry Id: 110000374130)¹
US TVA Gallatin Fossil Plant (EPA Registry Id: 110000493136)²
TVA Bull Run Fossil Plant (EPA Registry Id: 110043798487)³
TVA – Bull Run Fossil Plant (BRF) (EPA Registry Id: 110070003198)⁴
Colbert Fossil Plant (EPA Registry Id: 110000367834)⁵
TVA Cumberland Fossil Plant (EPA Registry Id: 110000493127)⁶
John Sevier Fossil and Combined Cycle Plant (EPA Registry Id: 110000607530)⁷
US TVA Johnsonville Fossil Plant (EPA Registry Id: 110000370535)⁸
TVA-Johnsonville Steam (EPA Registry Id: 110064642061)⁹
US TVA Kingston Fossil Plant (EPA Registry Id: 110000372631)¹⁰
US TVA Paradise Fossil Plant (EPA Registry Id: 110000380882)¹¹
Tennessee Valley Authority – Paradise Combined Cycle Plant (EPA Registry Id: 110067234335)¹²
Tennessee Valley Authority (TVA) – Shawnee Fossil Plant (EPA Registry Id: 110000493305)¹³

Fee Waiver Request

SELC is requesting copies (electronic, if possible) without charge, or at a reduced charge, because reduction or waiver of fees would be in the public interest. A disclosure is in the public interest if: (1) it is likely to contribute significantly to public understanding of the operations or activities of the government, and (2) it is not primarily in the commercial interest of the requester. The public interest standard of the fee waiver provision of the FOIA should be “liberally construed” in favor of waivers. *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987); *Pederson v. Resolution Trust Corp.*, 847 F. Supp. 851, 855 (D. Colo. 1994); *Etlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984). The goal of the statute is to avoid the “roadblocks and technicalities which have been used by various Federal agencies to deny waivers...” *Pederson*, 847 F. Supp. at 855.

SELC is a 501(c)(3) non-profit organization with over thirty years of experience disseminating public information regarding TVA regulatory and operations issues. *See* 5 U.S.C.

¹ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000374130.

² https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000493136.

³ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110043798487.

⁴ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110070003198.

⁵ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000367834.

⁶ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000493127.

⁷ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000607530.

⁸ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000370535.

⁹ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110064642061.

¹⁰ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000372631.

¹¹ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000380882.

¹² https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110067234335.

¹³ https://ofmpub.epa.gov/enviro/fii_query_detail.disp_program_facility?p_registry_id=110000493305.

§ 552(a)(4)(A)(iii). SELC maintains a website that includes both general and topic-specific information regarding the matters with which SELC is involved, including matters related to TVA.¹⁴ Lawyers at SELC are interviewed by or otherwise provide information to the media to explain their work related to TVA and its significance.¹⁵ SELC's website contains documents generated by SELC for the specific purpose of educating the public on particular issues. SELC speaks at community meetings on particular topics, including TVA's compliance with the CCR Rule. TVA's interpretation of and compliance with the CCR Rule is a subject of great public concern in Tennessee, given the danger of water contamination and the risk of catastrophic surface impoundment failures.¹⁶ SELC also assists the public in locating information relating to particular topics by collecting and posting relevant information, documents, and links to other websites.¹⁷

Given SELC's role in disseminating information regarding TVA, disclosure of the requested materials will clearly benefit the general public through increased understanding of the impact of TVA's actions and activities. SELC further certifies that disclosure of the information sought is not in its commercial interest.

FOIA requires a responding agency to make a "determination" on any request within twenty (20) working days of receipt. *See* 5 U.S.C. § 552(a)(6)(A)(i). The statute favors disclosure of records and instructs the agency to withhold information only in narrowly defined circumstances in which the agency can articulate a reasonably foreseeable harm protected by an exemption. *See id.* at § 552(a)(8)(A)(i). FOIA also requires the release of all reasonably segregable portions of a document that are themselves not exempt. *See id.* at § 552(b). Should

¹⁴ *See, e.g.,* <https://www.southernenvironment.org/news-and-press/news-feed/shelby-county-puts-strict-limits-on-tvas-wells> (February 2019); <https://www.southernenvironment.org/news-and-press/news-feed/selc-partners-push-for-better-protection-of-memphis-sand-aquifer-at-county> (March 2018); <https://www.southernenvironment.org/news-and-press/news-feed/selc-challenges-tva-plan-that-risks-polluting-memphis-drinking-water-source> (February 2018); <https://www.southernenvironment.org/news-and-press/news-feed/selc-pushes-back-against-tva-effort-to-expand-closed-door-decision-making> (September 2017); <https://www.southernenvironment.org/news-and-press/news-feed/administration-tells-power-plants-they-can-keep-polluting-water> (April 2017); <https://www.southernenvironment.org/news-and-press/news-feed/promoting-equitable-access-to-clean-energy-in-tennessee> (December 2016).

¹⁵ *See, e.g.,* <https://www.utilitydive.com/news/tva-votes-to-retire-paradise-bull-run-coal-units-despite-trump-tweet/548519/> (February 2019); <http://www.tennessean.com/story/opinion/2017/05/22/time-tva-state-regulators-step-up/101480930/> (May 22, 2017).

¹⁶ *See, e.g.,* <https://www.knoxnews.com/story/news/crime/2018/12/13/kingston-coal-ash-landfill-roane-county-groundwater-testing/2283487002/> (December 13, 2018); <https://www.oakridger.com/news/20181009/tva-to-study-storage-of-coal-ash-at-bull-run-fossil-plant-seeks-comments> (October 9, 2018); <https://www.nashvillepublicradio.org/post/decade-after-kingston-spill-tva-still-figuring-out-what-do-tennessees-coal-ash#stream/0> (December 21, 2018).

¹⁷ *See, e.g.,* <https://www.southernenvironment.org/news-and-press/press-releases/drinking-water-supplies-for-over-2-million-people-in-tennessee-at-risk-unde>; <https://www.southernenvironment.org/news-and-press/news-feed/selc-challenges-tva-plan-that-risks-polluting-memphis-drinking-water-source>; https://www.southernenvironment.org/uploads/words_docs/TVAServiceArea_and_CoalPlants_and_DWi ntakes_2016_0630_final.pdf.

EPA refuse to provide the information requested, EPA must inform SELC of the grounds for its refusal and the specific administrative appeal rights which are available. *See* 5 U.S.C. § 552(a)(6)(A)(i).

SELC further requests preparation of a *Vaughn* index to facilitate evaluation of the completeness of EPA's response. *See Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) (index should include a detailed justification for claims of exemption, as well as specificity, separation, and indexing of the documents).

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable duplication and search costs necessary to fulfill this request. However, I request you contact me before processing this request if the fee is expected to be in excess of \$100.00. SELC reserves our right to appeal a fee waiver or reduction denial.

If you have any questions regarding this request, please feel free to contact me at 615-921-9470 or cbowling@selctn.org. I appreciate your prompt attention to this matter and look forward to receiving the public records requested.

Sincerely,

Chelsea Bowling
Tennessee Bar Applicant